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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application regarding
the Conversion and Acquisition of Control
of Premera Blue Cross and its Affiliates

Docket No. G02-45

EIGHTH ORDER: PROTECTIVE
ORDER

Background

On or about May 6, 2003, Judge George Finkle, the Special Master appointed in this Matter, referred to me a recommended Protective Order (the “Order”). The language of the recommended Order referred to a Confidentiality Agreement that Premera and the Intervener Groups were in the process of negotiating. Subsequent to the referral, Premera and the Intervener Groups filed with me motions to review requesting certain revisions to the recommended Protective Order. In the meantime, the parties continued to negotiate the Confidentiality Agreement, and the Special Master acted as the mediator. On or about June 4, 2003, the Special Master informed me that the parties had agreed to the form of a Confidentiality Agreement (the “Agreement”). The Agreement includes the terms of the Protective Order and also gives the parties the ability to file promptly an action directly in court to enjoin the improper dissemination of protected information.

The purpose of the Protective Order and the Confidentiality Agreement is to give the parties access to information that otherwise is protected from disclosure. The Public Disclosure Act, the Insurance Code, and the rules governing civil litigation protect certain types of information from public disclosure, *see, e.g.*, RCW 42.17.310(h), 42.17.31904, 42.17.31905, 42.17.31916, 42.17.31917; 48.05.465, 48.31C.130, 48.43.335, 48.74.025;

1 Civil Rule 26(7)(c). Without the Protective Order and Confidentiality Agreement, the
2 Intervener Groups would not have access to the type of information about Premera's
3 operations that they require in order to present their positions in these proceedings. The
4 Order and the Agreement set forth specific procedures for the protection of confidential
5 information. These procedures strike a balance between giving access necessary to hold a
6 full and fair hearing and providing protections that reduce the likelihood of dissemination
7 of information that could cause harm to the competitive and financial position of Premera.
8

9 After reviewing the Special Master's recommended Order and the parties'
10 motions to review and responses thereto, I am adopting the Order as proposed by the
11 Special Master with only the changes described below.

12 1. In subsection 1(d), I have clarified that identified support staff assigned to
13 work with counsel in this Matter may have access to protected information in connection
14 with their duties
15

16 2. In subsection 1(d), I have included Marzita Rivera in the list of counsel
17 representing the Alaska Interveners.

18 3. In subsection 3(a), I have increased the number of representatives of
19 Premera and each Intervener Group who may have access to protected information from
20 one to two. The Intervener Groups requested a minimum of four representatives.
21 Premera opposed any increase. The interveners were permitted to participate in these
22 proceedings under certain conditions, primary of which was that they had to combine in
23 designated groups with each group being treated as a single and separate party. Limiting
24 the number of intervener representatives is consistent with the conditions originally
25

1 established for intervenor participation. However, I am increasing the number of
2 representatives from one to two. In this way, counsel to the Intervenor Groups should
3 always have at least one representative available, and the representatives will each have
4 the other for purposes of consultation. This limited increase strikes a balance between
5 adequate access to information and adequate protection of information.
6

7 4. Premera requested a change in section 4 of the Protective Order prohibiting
8 the use of any experts or consultants that are “currently or regularly employed or engaged
9 by parties with whom the producing party does business.” The Intervenor Groups object
10 to the proposed change on the ground that such a prohibition unduly limits the choice of
11 experts or consultants and that adequate protections against the misuse of information
12 exist in the Protective Order and the Confidentiality Agreement. I agree with the
13 observations of the Intervenor Groups and, therefore, will not adopt the proposed change
14 of Premera. That being said, if Premera has an objection to a particular expert or
15 consultant, such an objection can be raised at the appropriate time to the Special Master or
16 me.
17

18 5. Premera requested clarifying language in section 9 of Appendix A to the
19 Protective Order. I have changed the language in that section to reduce confusion without
20 altering the meaning.
21

22 At the last status conference held before me to discuss scheduling in these
23 proceedings, the parties identified as a priority the need to resolve issues regarding a
24 protective order and confidentiality agreement before moving forward in these
25 proceedings. Additionally, the OIC Staff and Premera were attempting to resolve issues

1 regarding documents requested by the OIC Staff's experts that were being withheld by
2 Premera under a claim of privilege. Now that the Protective Order and Confidentiality
3 Agreement are in place, I am directing the Special Master, after consulting with the
4 parties, to propose a scheduling order that includes dates for expert reports, discovery,
5 pre-filed testimony, the hearing, and any other events that the Special Master recommends
6 should be included in the order. The recommended scheduling order may also include any
7 procedures that the Special Master determines will promote fair and orderly proceedings.
8 In addition, I am directing the Special Master to address issues regarding any outstanding
9 information requests by the OIC Staff from Premera. If there remains any dispute over the
10 production of information, the Special Master shall issue a recommended ruling for me to
11 review.
12

13 **Introduction to Protective Order**

14

15 This Protective Order in the above-entitled matter ("Matter") applies to
16 PREMERA and Premera Blue Cross (collectively, "Premera"); to the four intervenor
17 groups (Washington State Medical Association; The Hospital Associations; Premera
18 Watch Coalition; and The Alaska Intervenors (hereinafter collectively, the "Intervenor
19 Groups") and their constituent intervenors; and to the respective, directors, officers,
20 employees, agents, lawyers, consultants, experts and any other person or entity under the
21 direction or control of Premera, the Intervenor Groups and their constituent intervenors.

22 For the convenience of drafting, each of Premera and the Intervenor Groups is
23 referred to hereinafter as a "party" and all of them are referred to as the "parties."
24 (Premera generally objects to the use of "party" or "parties" in reference to Intervenor
25

1 Groups. Use of such terms in this Order is not intended to overrule or waive such
2 objection.)

3 This Protective Order shall not be interpreted as an agreement, authorization or
4 mandate by or for any party to waive, forgo or restrict its ability to gain access to
5 information through the Washington State Public Disclosure Act, RCW ch. 42.17,
6 Alaska's Public Records Law, AS 40.25.100 *et seq.* or the federal Freedom of Information
7 Act, 5. U.S.C. 552, *et seq.* as amended in Public Law 104-231 or other legal authority for
8 gaining access to information outside of formal discovery, or to disseminate information
9 obtained by a party in that manner.

10 This Protective Order does not affect the authority to receive or review
11 information covered by this Order of (1) the Commissioner, his legal counsel, the
12 Washington Attorney General and their respective staffs that have been assigned to assist
13 them in regard to this matter, (2) the OIC Staff, its legal counsel and its consultants, or (3)
14 the Alaska Division of Insurance ("ADI"), its legal counsel and its consultants.

15 Upon the recommendation of the Special Master, I hereby make the following
16 **FINDINGS:**

17 1. It is likely that discovery in this Matter may require disclosure of
18 information containing trade secrets and non-public proprietary business information and
19 that such information will be required to be used in the course of discovery (e.g., in
20 depositions), in pre-hearing motions, and at the final adjudicative hearing in order to
21 resolve the issues in this Matter.

22 2. Absent a protective order and the entry of confidentiality agreements
23 between Premera and each of the Interveners (hereinafter, "Confidentiality
24 Agreement(s)"), a significant risk exists that trade secrets and non-public proprietary
25 business information might be used by the producing party's competitors, customers or

1 other parties with whom the producing party does business or might become available to
2 persons or entities who have no legitimate need for such information other than in this
3 Matter, that is, in the review of Premera's proposed conversion by the Insurance
4 Commissioner and by the Attorney General. Disclosure of such information to the public,
5 competitors, customers or other parties doing business with the producing entity may be
6 seriously detrimental to the entity producing the information.

7 3. A protective order is necessary in this Matter in order to govern the
8 disclosure and use of such information. Confidentiality agreements between Premera and
9 each of the Interveners would be useful in order to be able to effectively and promptly
10 protect such information and enjoin any unauthorized use or dissemination of such
11 information.

12 Based upon the Findings above and pursuant to RCW 34.05.446(1) and the
13 previous orders entered herein, the Special Master has RECOMMENDED and the
14 Commissioner hereby ORDERS that the procedures set forth below be followed with
15 respect to information, documents, or other things obtained via document requests,
16 subpoenas, depositions or other discovery methods in this Matter:

17 **1. Definitions.**

18 (a) Confidential Information: As used herein, "Confidential Information" shall
19 mean any information, documents, testimony, or other things furnished in the course of
20 this Matter (1) that contains proprietary data, know-how, other valuable commercial
21 information, or personal information involving a subscriber, member, officer, director, or
22 employee, and (2) that a party or third party, in good faith, deems confidential and
23 designates as "Confidential Information" pursuant to the procedures set forth below.

24 The term shall include information, documents, testimony, or other things obtained
25 from, or about, a third party via subpoena, deposition, or other discovery in this

1 proceeding. The term “document(s)” shall be broadly construed to include information
2 that is recorded in any form, including but not limited to hard copy, electronic copy, and
3 video.

4 (b) Attorneys’ Eyes Only Information: Any information produced by any
5 party that contains trade secrets may be designated in writing as “Attorneys’ Eyes Only
6 Information.” The term “trade secrets” as used herein shall have the meaning as stated in
7 RCW 19.108.010(4) ; i.e., information that derives economic value, actual or potential,
8 from not being generally known to, or not being readily ascertainable by proper means by,
9 other persons who can obtain competitive advantage or economic value from its
10 disclosure or use. “Trade secrets” shall also have the meaning of sensitive financial or
11 actuarial data/information integral to the business operations of a party for which the party
12 has a demonstrable interest in avoiding disclosure.

13 If there is any dispute as to whether any document or information should properly
14 be classified as Confidential Information or as Attorneys’ Eyes Only Information, or
15 should not be designated as either, the Special Master will, as set forth below, make the
16 determination as to what classification, if any, is proper.

17 (c) Lead Attorney: As used herein, “Lead Attorney” shall mean the individual
18 attorney identified by each of the four Intervener Groups in response to the Fourth Order
19 of the Insurance Commissioner. If an Intervener Group files a Notice of Substitution,
20 substituting another individual attorney for the current Lead Attorney, then the substituted
21 attorney shall be deemed thereafter to be the Lead Attorney for that party. It is
22 contemplated that all notices can and will be accomplished through service on the Lead
23 Attorney and that the Lead Attorney will be the only person allowed to speak, question
24 and argue on behalf of his/her Intervener Group at any status conference, discovery
25 conference, motion hearing and at the hearing on this Matter. *Except that*, by agreement

1 (which should not be unreasonably withheld) or upon further order for good cause shown
2 an Intervener Group may temporarily substitute another individual attorney for the Lead
3 Attorney.

4 (d) Parties' Counsel. As used herein, "Parties' Counsel" or "Party's Counsel"
5 shall refer to the following attorneys or law firms and specifically identified support staff
6 assigned to work on this Matter who have been (or members of which have been)
7 proposed by the parties to have access to Confidential Information and Attorneys' Eyes
8 Only Information. The attorneys and law firms listed below shall maintain a list of the
9 name and position, including a general description of duties related to this Matter, of
10 support staff assigned to work on this Matter who may have access to Confidential
11 Information or Attorneys' Eyes Only Information. The list shall be provided upon request
12 of a party, the Special Master or the Commissioner.

13 *Premera: Preston Gates & Ellis LLP*

14 *Premera Watch Coalition:*

15 For Welfare Rights Organizing Coalition--Columbia Legal Services; Kurt
16 Calia and David Jolley (of Covington & Burling);

17 For Washington Protection and Advocacy System—Daniel S. Gross, David
18 Girard, Deborah A. Dorfman;

19 For Washington Citizen Action, American Lung Association of
20 Washington, Northwest Federation of Community Organizations, Northwest
21 Health Law Advocates, Service Employees International Union Washington State
22 Council, The Children's Alliance, Washington Academy of Family Physicians,
23 Washington Association of Churches and Washington State NOW—Sirianni,
24 Youtz, Meier & Spoonemore;

1 For Washington Association of Community and Migrant Health Centers—
2 Greg Montgomery (of Miller Nash, LLP)

3 *The Hospital Association:* Bennett Bigelow & Leedom, P.S.; Taya Briley
4 (AWPHD General Counsel)

5 *Washington State Medical Association:* Coopersmith & Associates

6 *The Alaska Interveners:* Alaska Legal Services Corp.; Burr, Pease &
7 Kurtz; Ardith Lynch, James Parrish, Mary E. Greene and Michael P. Hostma (of
8 the University of Alaska); and Maritza Rivera.

9 Deletions from and substitutions or additions to this listing of Parties’
10 Counsel may be made by agreement (which should not be unreasonably withheld)
11 or upon further order for good cause shown.

12 (e) Disclose or Disclosure: As used herein, “disclose” or “disclosure” shall
13 mean to in any manner, directly or indirectly, discuss, give, transmit, reveal, show, copy,
14 provide substantive information about, provide substantive knowledge of, provide access
15 to, permit or authorize the use of, or otherwise communicate any information, document
16 or the contents thereof.

17 (f) Treatment of Members. The presumption shall be that the individual
18 members of Premera and of the constituent interveners shall not have access to any
19 Confidential or Attorneys’ Eyes Only Information, except insofar as a member has access
20 to such information in another capacity, e.g., as Party’s Counsel or as a consultant. The
21 Special Master will consider on a case-by-case basis whether there is reason for members
22 of any given constituent intervener to have access to Confidential Information.

23 **2. Marking of Confidential Information or Attorneys’ Eyes Only**
24 **Information.**

1 (a) Marking: Documents, information, or tangible items shall be designated
2 Confidential Information or Attorneys' Eyes Only Information within the meaning of this
3 Protective Order in the following ways:

4 (1) In the case of documents that are produced by any party, designation shall
5 be made by placing on each page of the document the legend "Confidential" or
6 "Attorneys' Eyes Only."

7 (2) In the case of document requests (excluding requests made under the
8 Washington State Public Disclosure Act, RCW ch. 42.17, Alaska's Public Records Law,
9 AS 40.25.100 et seq. or the federal Freedom of Information Act, 5. U.S.C. 552, et seq. as
10 amended in Public Law 104-231) that are made to the OIC Staff for Premera documents
11 and in the case of any subpoenas to the OIC Staff consultants that seek Premera
12 documents, the OIC Staff and its consultants shall not be required to produce copies of
13 any documents that have been obtained from Premera. Rather, the OIC Staff and/or its
14 consultants shall respond to the document requests and subpoenas by identifying, by
15 consecutive numbers, the responsive documents and Premera shall provide the requesting
16 party with a copy of the responsive documents. The parties will pay for all copies of
17 documents that they request. Details about the costs will be resolved by agreement of the
18 requesting and the producing party, but in no event will any party be required to pay more
19 than the actual copying cost.

20 (3) In the case of documents that are obtained from third parties through
21 subpoena, deposition or other discovery in this proceeding, designation shall be made as
22 follows:

23 (i) The third party may itself designate its documents or other
24 materials as "Confidential" or "Attorneys' Eyes Only" at the time that it
25 produces the documents or other materials. In order to facilitate this

1 alternative, the party issuing the subpoena for, or otherwise requesting, the
2 documents shall attach a copy of this Protective Order to its subpoena or to
3 its request for those documents.

4 (ii) In addition to any designation placed on the document or
5 other material by the producing third party, upon receipt of such documents
6 by Premera's Counsel or by the Lead Attorney for any receiving party, the
7 documents or tangible things automatically shall be deemed Attorneys'
8 Eyes Only Information. Within five (5) business days of receipt of third
9 party documents or other materials, Premera's Counsel or Lead Attorney
10 for a receiving party shall furnish a copy thereof to Premera's Counsel and
11 Lead Attorneys for any other parties to this litigation who have not
12 previously received such documents from the producing third party. (If the
13 material cannot be reproduced for any legitimate reason, Premera's
14 Counsel and Lead Attorneys for all other parties shall be given an
15 opportunity to inspect it for purposes of making a confidentiality
16 designation.) Each party shall have five (5) calendar days from its receipt
17 of the documents or its inspection of the material within which to formally
18 designate a third party document or tangible thing as Confidential
19 Information or Attorneys' Eyes Only Information, provided that only
20 documents or things generated by the designating party, or derived from
21 information generated by the designating party, shall be so designated; and
22 provided further any party may object to such designation on the grounds
23 that such information has allegedly been previously produced as a result of
24 a request under the Washington State Public Disclosure Act, RCW ch.
25 42.17, Alaska's Public Records Law, AS 40.25.100 *et seq.* or the federal

Freedom of Information Act, 5 U.S.C. 552, *et seq.* as amended in Public Law 104-231 or other legal authority for gaining access to information outside of formal discovery, in which case the Special Master will determine whether such designation is proper; pending the Special Master's determination, the designation of Confidential Information or Attorneys' Eyes Only Information shall remain in effect. Any party wishing to so designate a document or tangible thing obtained from a third party shall inform all the other parties and the third party in writing. All parties shall promptly label their copies of designated documents accordingly, and the documents shall bear that designation unless contested pursuant to Section 8 below. If no party or third party designates a document or tangible thing as Confidential Information or Attorneys Eyes Only Information within the five (5) day period, the presumptive Attorneys' Eyes Only designation terminates.

(4) In the case of requests for admission (if such requests are authorized by subsequent order herein) and the information contained therein, designation shall be made by placing on the pages containing the confidential information the legend "Confidential" or "Attorneys' Eyes Only," as the case may be. If any of the pages are so designated, then the cover page of the discovery response shall state: "Contains Confidential [and/or Attorneys' Eyes Only] Information Protected by Order of the Special Master and the Insurance Commissioner."

(5) In the case of tangible items, designation shall be made by visibly marking the item "Confidential" or "Attorneys' Eyes Only," as the case may be.

(6) In producing original files and records for inspection, no marking

1 need be made by the producing party in advance of the inspection. For the purposes of
2 the inspection, all documents produced shall be deemed Attorneys' Eyes Only
3 Information and shall be inspected only by Parties' Counsel, the OIC Staff, its legal
4 counsel and its consultants, and the services retained by counsel to photocopy or image
5 documents or evidence. Thereafter, upon selection of specified documents for copying by
6 the inspecting party, the producing party shall mark as "Confidential" or "Attorneys'
7 Eyes Only" the copies of such documents at the time the copies are produced to the
8 inspecting party.

9 (b) Good Faith: The parties agree to designate information as Confidential
10 Information or Attorneys' Eyes Only Information on a good faith basis and not for
11 purposes of harassing the receiving party or for purposes of unnecessarily restricting the
12 receiving party's access to information for use in this Matter. The parties will not
13 designate as Confidential Information or Attorneys' Eyes Only Information any document
14 or information that has previously been disclosed voluntarily and without any claim of
15 confidentiality or that was disclosed after a claim of confidentiality was legally
16 determined to be invalid or that was disclosed in response to a public disclosure request
17 made pursuant to Washington State Public Disclosure Act, RCW ch. 42.17, Alaska's
18 Public Records Law, AS 40.25.100 et seq. or the federal Freedom of Information Act, 5.
19 U.S.C. 552, et seq. as amended in Public Law 104-231 to any person or entity not
20 affiliated with the designating party.

21 (c) Receipt of Designated Information: Except as permitted by further order of
22 the Special Master, or upon appeal by the Commissioner, or by subsequent written
23 agreement of the designating party, such designated documents and testimonial
24 information shall be safeguarded and handled by the receiving party and/or its Agents
25

1 and/or by the Lead Attorneys, and Parties' Counsel as the case may be, in accordance with
2 the provisions of this Protective Order and the applicable Confidentiality Agreement(s).

3 The receiving party, that Party's Counsel and the party's Agents, shall not copy,
4 reproduce, summarize, or abstract Confidential Information or Attorneys' Eyes Only
5 Information, except as expressly authorized by this Protective Order and then only to the
6 extent that such copying, reproduction, summarization, or abstraction is reasonably
7 necessary for the conduct of this Matter.

8 The receiving party and Parties' Counsel shall mark all such copies, reproductions,
9 summaries, and abstracts in the same manner as the designated materials on which they
10 are based. All such copies, reproductions, summaries, and abstracts, including attorney
11 memoranda and work product, shall be subject to the terms of this Protective Order.

12 **3. Right of Access to Designated Information.**

13 (a) Confidential Information: Disclosure of information designated as
14 Confidential Information, including summaries thereof, shall be limited to the
15 Commissioner, the Commissioner's legal counsel, the Special Master, the Washington
16 Attorney General, the Alaska Director of Insurance and her legal counsel, and their
17 respective staffs that have been assigned to assist them in regard to this matter, and to the
18 following persons: (1) the OIC Staff and the Alaska Division of Insurance Staff assigned
19 to the conversion and their respective legal counsel and consultants; (2) Parties' Counsel
20 (3) two representatives of Premera designated to assist Premera's Counsel with the
21 preparation of this hearing, provided that each such representative shall execute an
22 Appendix A Declaration; (4) two representatives of each Intervener Group designated to
23 assist Parties' Counsel with the preparation of this hearing, provided that such
24 representative shall execute an Appendix A Declaration; (5) the consultants or experts
25 retained by the parties or Parties' Counsel to consult or testify in the Matter (upon

1 compliance with Section 4 below); (6) court reporters and videographers of sworn
2 proceedings; (7) services retained by counsel to photocopy or image documents or
3 evidence; (8) in regard to a particular document containing Confidential Information, any
4 person whom the document shows on its face has previously seen or been sent the
5 document, such as authors, drafters, recipients, and copyholders of the document; and (9)
6 non-expert witnesses and prospective witnesses, to the extent deemed necessary by
7 Parties' Counsel to prepare for, or to give testimony regarding facts at issue in, this
8 hearing, but as to this category Parties' Counsel must retain physical custody of the
9 Confidential Information document or object unless consent to release it is given by the
10 party that designated it as Confidential Information. Disclosure of Confidential
11 Information to any expert or consultant shall be limited to that Confidential Information
12 necessary for the expert's or consultant's consultation work or preparation to testify.

13 Persons in categories (3) through (9) above shall be required to execute a
14 declaration and agreement in the form of Appendix A hereto (herein, an "Appendix A
15 Declaration"), as set forth in subsection 3(d) below, before receiving any Confidential
16 Information.

17 (b) Attorneys' Eyes Only Information:

18 (i) Disclosure of information designated as Attorneys' Eyes Only Information,
19 including summaries thereof, shall be limited to the Commissioner, the Commissioner's
20 legal counsel, the Special Master, the Washington Attorney General, the Alaska Director
21 of Insurance and her legal counsel, and their respective staffs that have been assigned to
22 assist them in regard to this matter, and to the following persons: (1) the OIC Staff and
23 the Alaska Division of Insurance Staff assigned to the conversion and their respective
24 legal counsel and consultants; (2) Parties' Counsel; (3) court reporters and videographers
25 of sworn proceedings in which the Attorneys' Eyes Only information is raised; (4)

1 services retained by Parties' Counsel to photocopy or image documents or evidence; (5) in
2 regard to a particular document containing Attorneys' Eyes Only Information, any person
3 whom the document shows on its face has previously seen or been sent the document, such
4 as authors, drafters, recipients, and copyholders of the document; and (6) deponents, but
5 only to the extent that the procedure set forth in subsection 3(e) below is followed.

6 Persons described in categories (3) through (6) above shall be required to execute an
7 Appendix A Declaration, as set forth in subsection 3(d) below, before receiving any
8 Attorneys' Eyes Only Information.

9 ii) If Parties' Counsel for a party receiving Attorneys' Eyes Only Information
10 believes that it is necessary to disclose such information to person(s) other than as set
11 forth in the immediately preceding subsection 3(b)(i) in order to properly prepare this
12 hearing, the following procedures shall be employed:

13 (1) Premera's Counsel or the Lead Attorney for the receiving party as the case
14 may be shall notify, in writing by overnight delivery or by facsimile, the Lead Attorneys
15 and/or Premera's Counsel for the party designating the Attorneys' Eyes Only Information
16 of their or their constituent Intervener's desire to disclose such information and shall
17 identify the persons(s) to whom they intend to make disclosure, describe the general
18 purpose of the disclosure, and identify the Attorneys' Eyes Only documents or
19 information that they seek to disclose.

20 (2) If no objection to such disclosure is made by Premera's Counsel or the
21 Lead Attorney for the designating party, as the case may be, within three (3) business days
22 of receipt of such notification, the Lead Attorney(s) or Premera's Counsel, as the case
23 may be, for the receiving party shall be free to make such disclosure to the designated
24 person(s); provided, however, that the Lead Attorney(s) or Premera's Counsel, as the case
25 may be, for the receiving party shall serve upon Lead Attorney(s) or Premera's Counsel,

1 as the case may be, for the designating party, prior to disclosure, an Appendix A
2 Declaration, whereby such person(s) agree to comply with and be bound by this Protective
3 Order and by any applicable Confidentiality Agreement(s).

4 (3) If Premera's Counsel or the Lead Attorney(s), as the case may be, for the
5 designating party objects in writing to such disclosure, no disclosure shall be made unless
6 and until the Special Master, or upon appeal the Insurance Commissioner, authorizes such
7 disclosure. The party wishing to make such disclosure may bring before the Special
8 Master the question of whether the particular Attorneys' Eyes Only Information can be
9 disclosed to the identified person(s); provided, however, that the parties must first meet
10 and confer in good faith in person or by telephone and within three (3) business days of
11 the written objection. If the person for whom the disclosure is sought is an expert or
12 consultant of the party requesting the disclosure, then the party objecting to the disclosure
13 shall have the burden of proving to the Special Master the inappropriateness of such
14 disclosure. If the person for whom the disclosure is sought is not an expert or consultant
15 of the requesting party, then the party requesting the disclosure shall have the burden of
16 proving to the Special Master: (a) that the party seeking to disclose the information to the
17 particular person has a compelling reason to do so and (b) that such reason is not
18 outweighed by the danger that, in disclosing the Attorneys' Eyes Only Information to that
19 person, there is a risk that the designating party or a third party would be harmed.

20 (c) Prohibition Against Disclosure to Unauthorized Persons:

21 All information that is designated as or deemed Confidential Information or
22 Attorneys' Eyes Only Information shall be kept confidential in compliance with the terms
23 of this Protective Order and shall not be disclosed (as that term is defined above) to any
24 person not authorized to receive the information under the terms of this Protective Order.
25 Confidential Information and Attorneys' Eyes Only Information received by any person or

1 entity shall be used only for purposes of this Matter, that is, for the review of Premera's
2 proposed conversion by the Insurance Commissioner and by the Washington Attorney
3 General.

4 (d) Requirement to Obtain a Written Declaration:

5 Except as otherwise provided herein, Confidential Information and Attorneys'
6 Eyes Only Information shall not be disclosed to anyone authorized by this Protective
7 Order to see such information unless and until the Party's Counsel for the party wishing
8 to make such disclosure has obtained an executed Appendix A Declaration from each
9 person to whom disclosure is to be made. The originals of all signed declarations shall be
10 maintained by the Parties' Counsel throughout the duration of this litigation, including all
11 appeals.

12 (e) Use of Designated Information in Depositions: If, in the course of this
13 proceeding, depositions are conducted that involve Confidential Information or Attorneys'
14 Eyes Only Information, Parties' Counsel may designate, on the record, the portion(s) of
15 the deposition which they believe may contain Confidential Information or Attorneys'
16 Eyes Only Information.

17 (i) If designation of Confidential Information is made during the deposition,
18 those portions of said depositions involving such information will be taken with no one
19 present except Parties' Counsel and (1) one designated representative of Premera; (2) one
20 designated representative of each of the Intervener Groups; (3) the OIC Staff, the ADI
21 Staff, and their respective legal counsel and consultants; provided, however, that the OIC
22 Staff and the ADI Staff are requested to limit the number of consultants each brings to any
23 given deposition; (4) the deponent; and (5) the court reporter and videographer, if any.

24 (ii) If designation of Attorneys' Eyes Only Information is made during the
25 deposition, those portions of said depositions involving such information will be taken

1 with no one present except Parties' Counsel and (1) one designated representative of the
2 party producing the Attorneys' Eyes Only Information; (2) the OIC Staff, the ADI Staff,
3 and their respective legal counsel and consultants; provided, however, that the OIC Staff
4 and the ADI Staff are requested to limit the number of consultants each brings to any
5 given deposition; (3) the deponent; and (4) the court reporter and videographer, if any.

6 (iii) A witness whose deposition is being taken may see any document
7 identified as Confidential Information or Attorneys' Eyes Only Information if and only if
8 the document is first handed to Lead Attorney or Premera's Counsel, as the case may be,
9 for the designating party for inspection, and either those attorney(s) for the designating
10 party has no objection to the witness's seeing the document or the witness has previously
11 seen or has been sent the document. If Party's Counsel for the designating party objects,
12 he or she may (1) request that the witness sign an Appendix A Declaration and, if the
13 witness does so, then the witness can see the document and be questioned at that time
14 about it; (2) note the objection for the record, at which point the document shall not be
15 shown to the witness and the witness shall not be questioned about the document or its
16 contents, pending a motion and ruling by the Special Master, but the deposition shall
17 proceed in regard to other areas of inquiry; or (3) recess the deposition so that the matter
18 can be brought before the Special Master for determination.

19 (iv) Unless there has been no designation of Confidential Information or
20 Attorneys' Eyes Only Information during the deposition, for the first seven (7) days after
21 receipt of any volume of a deposition transcript by Parties' Counsel the entire transcript
22 volume (and any exhibits) shall be deemed to be Attorneys' Eyes Only Information, so as
23 to give Parties' Counsel an opportunity to designate specific portions of the volume (by
24 specific page and line reference or exhibit number) as Confidential Information or as
25 Attorneys' Eyes Only Information. Any corrections to the deposition transcript by the

1 deponent shall also be deemed to be subject to the same confidentiality presumption as is
2 set forth in the previous sentence of this subsection 3(e)(iv). Unless otherwise agreed by
3 Parties' Counsel the right to make confidentiality designations on deposition transcripts
4 shall be waived unless made within the time limit prescribed in this subsection 3(e)(iv).
5 The court reporter shall be advised in writing of any confidentiality designations made
6 pursuant to this subsection 3(e)(iv) and shall mark the pages of the Original transcript and
7 any deposition exhibits accordingly and shall place on the cover of each volume of the
8 transcript containing such designated information a statement: "Contains Confidential
9 [and/or Attorneys' Eyes Only] Information Protected by Order of the Special Master and
10 the Insurance Commissioner, and shall include an index of the pages in which
11 Confidential and/or Attorneys' Eyes Only information appears. Each party shall mark the
12 pages and covers of all its copies of the transcript volumes in the same way. Transcripts
13 of testimony, portions thereof, deposition exhibits, and documents containing Confidential
14 Information or Attorneys' Eyes Only Information from a deposition shall be filed only
15 under seal as described in Section 7.

16 **4. Experts and Consultants.**

17 The experts and consultants described in subsection 3(a) above (other than the OIC
18 Staff's and the ADI Staff's consultants) shall include only persons or entities that neither
19 compete directly nor indirectly with, nor are currently or regularly employed or engaged
20 by persons or entities that compete directly or indirectly with, the party whose
21 Confidential Information or (if permitted under subsection 3(b)(ii)) Attorneys' Eyes Only
22 Information is sought to be disclosed to such experts or consultants. "Compete with," as
23 used herein, means to offer comparable products or services to those offered by the
24 designating party, within a geographic area currently served by the designating party.
25

1 In addition to the requirements set forth in the preceding paragraph, information
2 designated as Attorneys' Eyes Only Information shall not be disclosed to any expert or
3 consultant unless and until subsection 3(b)(ii) is complied with.

4 **5. Inadvertent Production.**

5 (a) If, through inadvertence, a party provides any confidential information
6 pursuant to this litigation without marking the information as Confidential Information or
7 Attorneys' Eyes Only Information, that party may so inform the receiving party and
8 provide copies of such information marked with the correct designation. The receiving
9 party shall then return the unmarked copies to the designating party. To the extent that the
10 receiving party has already disclosed such information to those not authorized to receive
11 Confidential Information or Attorneys' Eyes Only Information, as the case may be, the
12 receiving party shall promptly notify the designating party as to the specific recipients of
13 such information and shall take all reasonable steps to remove such information and all
14 copies thereof from said recipients.

15 (b) If, through inadvertence, a party provides any document as to which it has
16 a claim of attorney-client privilege, attorney work product, or other discovery privilege or
17 immunity, the producing party may inform the receiving party of the privileged or
18 immune nature of the disclosed document, and the receiving party shall make no further
19 use of said documents and shall return all copies of such documents (and destroy all
20 summaries of same) within five (5) business days of receipt of written notice from the
21 producing party; provided, however, that the receiving party may, upon giving notice
22 within the same five (5)-day period, file a motion with the Special Master regarding the
23 propriety of the assertion of a discovery privilege or immunity, in which case the
24 receiving party shall make no further use or disclosure of the document until the Special
25 Master has ruled; and provided further that any filing of or other submission made with

1 respect to such a document shall be subject to the same requirements as if it had been
2 marked Attorneys' Eyes Only Information. To the extent that the receiving party has
3 already disclosed such documents to another person or party, the receiving party shall
4 promptly notify the producing party as to the specific recipients of such documents and
5 shall take reasonable steps to retrieve such documents from said recipients.

6 **6. Disclosure Contrary to this Agreement.**

7 If Confidential Information or Attorneys' Eyes Only Information is disclosed to
8 any person other than in the manner authorized by this Protective Order, the person(s)
9 responsible for the disclosure must immediately bring all pertinent facts relating to such
10 disclosure to the attention of the Lead Attorney or Premera's Counsel, as the case may be,
11 and Party's Counsel of the party with whom (s)he is affiliated and the Lead Attorney or
12 Premera's Counsel, as the case may be, of the designating party and, without prejudice to
13 any other rights and remedies of the designating party, make every reasonable effort to
14 prevent further disclosure by it or by the person who was the recipient of such
15 information.

16 **7. Filing Confidential or Attorneys' Eyes Only Information.**

17 Any document, pleading, brief, declaration, affidavit, or tangible item that contains
18 Confidential Information or Attorneys' Eyes Only Information, if filed or submitted to the
19 Special Master or to the Commissioner or to any Court, shall be filed as follows:

20 (a) If any document containing Confidential Information or Attorneys' Eyes
21 Only Information is placed in or among the papers in this Matter or in any court
22 proceeding or appeal, it shall be filed in a sealed envelope or container marked with the
23 case caption and a notice substantially as follows:

24 CONFIDENTIAL
25

1 This envelope or container holds information of [name of party]
2 filed under seal pursuant to a protective order. This envelope or
3 container may not be opened, and the contents hereof may not be
4 displayed or revealed, except by direction of the Special Master for
the Insurance Commissioner or by the Insurance Commissioner or
by a Court of proper jurisdiction or by written consent of [name of
party].

5 (b) The Public Affairs Division of the Office of the Insurance Commissioner
6 shall inform any member of the public desiring access to any of the papers in this Matter
7 filed under seal that the papers have been sealed.

8 **8. Acceptance of a Designated Document Does Not**
9 **Constitute Agreement with Its Designation.**

10 Acceptance by a party of any information designated as Confidential Information
11 or Attorneys' Eyes Only Information shall not constitute a concession that the
12 information, document or thing is properly so designated. A receiving party may contest a
13 designation that information is Confidential Information or Attorneys' Eyes Only
14 Information. If the receiving party disagrees with the designation and marking of any
15 such information, then the parties shall first try to resolve the matter informally. If they
16 cannot do so, the party designating the document shall indicate in writing the reason for its
17 designation. The party opposing the designation may present the dispute to the Special
18 Master by motion or otherwise. In the resolution of such a dispute, the burden of
19 establishing the proper designation shall be on the party who is making the designation.

20 **9. Objections Preserved.**

21 This Protective Order shall be without prejudice to the right of any party or any
22 third person to oppose production of any document or information on grounds other than,
23 or in addition to, claims that the document or other information constitutes Confidential
24 Information or Attorneys' Eyes Only Information.

25 **10. Right to Seek or Agree to Other Orders.**

1 This Protective Order shall not prevent any party or the OIC Staff or any third
2 person from applying to the Special Master for relief therefrom, or from applying to the
3 Special Master for further or additional protective orders. (E.g., anyone may seek a
4 protective order regarding what it believes is highly sensitive personal information,
5 including personnel, medical and similar records.)

6 Nor shall this Protective Order prevent the parties from agreeing among
7 themselves to modify this Protective Order, subject to the approval of the Special Master,
8 or to vacate this Order, subject to recommendation of the Special Master and the approval
9 of the Commissioner. Nothing in this Protective Order shall limit a party's use or
10 dissemination of its own information.

11 **11. Continued Protection.**

12 In the event that any Confidential Information or Attorneys' Eyes Only
13 Information is used in any administrative, court or other proceeding in connection with
14 this Matter, it shall not lose status as Confidential Information or Attorneys' Eyes Only
15 Information through such use.

16 **12. Hearing.**

17 At the Hearing in this Matter, exhibits containing Confidential Information or
18 Attorneys' Eyes Only Information shall, at the discretion of the designating party and with
19 the permission of the Commissioner, be filed under seal. If a party or the OIC Staff
20 intends to refer to any Confidential Information or Attorneys' Eyes Only Information in
21 open hearing, the party seeking to cite or rely upon such information or the OIC Staff as
22 the case may be shall obtain the designating party's consent prior to doing so or give
23 reasonable notice to the designating party to allow it to seek protection of the
24 Commissioner (e.g., by clearing the hearing room of third parties).

25 **13. Other Litigation.**

1 If any person, agency or entity having possession, custody, or control of any
2 Confidential Information or Attorneys' Eyes Only Information receives a subpoena or
3 other process or order to produce such information in another legal proceeding, that
4 person shall, within two (2) business days of receiving such subpoena, process or order:
5 (1) notify Lead Attorney for the designating party of the subpoena or other process or
6 order; (2) notify and furnish Lead Attorney or Premera's Counsel as the case may be for
7 the designating party with a copy of the subpoena or other process or order; and (3)
8 cooperate with respect to all reasonable procedures sought to be pursued by the
9 designating party. The designating party shall have the burden of defending against such
10 subpoena or other process or order. The person receiving the subpoena or other process or
11 order shall be entitled to comply with it if the designating party fails to obtain an order
12 modifying or quashing the subpoena or other process or order within 14 days after the
13 designating party receives a copy of the same.

14 **14. Return or Destruction of Designated Information.**

15 At the conclusion of this action, including any appeals, all Confidential
16 Information and Attorneys' Eyes Only Information furnished pursuant to this Protective
17 Order, and all copies thereof, shall be returned to counsel for the producing party or, at the
18 producing party's option, destroyed by counsel for the receiving party; provided, however,
19 that this requirement shall not apply to the OIC Staff or the ADI Staff and their respective
20 legal counsel and consultants; provided further, however, that in regard to said
21 consultants, this Paragraph shall not be read to change, modify or interfere with any
22 provision of any confidentiality agreement that the consultant has entered into with any
23 providing party. Parties' Counsel for the receiving party shall certify to the producing
24 party compliance with this provision. Notwithstanding the foregoing,, Parties' Counsel
25

1 shall be entitled to retain file copies of all pleadings, motion papers, legal memoranda,
2 correspondence, and work product.

3 **15. Continued Agreement to Confidentiality.**

4 The provisions of this Protective Order insofar as they restrict the disclosure,
5 communication, and use of Confidential Information and Attorneys' Eyes Only
6 Information shall continue to be binding after the conclusion of this Matter.

7 **16. Other Privacy Rights Unaffected.**

8 This Order shall not be interpreted as an agreement, authorization or mandate by
9 or for any party to waive any privacy right, privilege or other legal defense against the
10 disclosure of information for any reason other than because the information is
11 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as defined in §§ 1(a) and 1(b) of
12 this Order above.

13 This Protective Order is being entered based, in part, on the representation of
14 Premera and the Intervener Groups that they have agreed to enter into a Confidentiality
15 Agreement, the form of which is attached hereto as Appendix B. This Order is subject to
16 modification if the affected parties do not sign the Confidentiality Agreement.

17 IT IS ORDERED THAT any subpoenas, document requests, or other discovery
18 served by any party must be served on all parties.

19 The Insurance Commissioner having reviewed the Findings and Recommendations
20 of the Special Master, and the Parties' requests and responses thereto to modify the
21 Findings And Recommendations of the Special Master, IT IS HEREBY ORDERED that
22 this PROTECTIVE ORDER be, and hereby is ENTERED this _____ day of June, 2003.

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24 MIKE KREIDLER
25 INSURANCE COMMISSIONER

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